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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,753	06/06/2001	Olaf Vancura	1498/198(b)	8046

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MCDERMOTT WILL & EMERY LLP
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WASHINGTON, DC 20005-3096

EXAMINER	
PIERCE, WILLIAM M	
ART UNIT	**PAPER NUMBER**
3711	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

ED

Office Action Summary	Application No.	Applicant(s)	
	09/875,753	VANCURA, OLAF	
	Examiner	Art Unit	
	William M. Pierce	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 2/5/07.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1,3,8-10,18,19,24,25,30,88-101 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1,3,8-10,18,19,24,25,30,88-101 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

WILLIAM M. PIERCE
PRIMARY EXAMINER

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

Claims 1, 3, 8-10, 18, 19, 24, 25, 30 and 88-101 are rejected under 35 U.S.C. 103 as being unpatentable over Walker in view of the teachings of Vancura, Martinez, or Kilby as set forth in the previous office action;

"Claims 1, 3 and 9 are rejected for the reasons set forth in the grounds for rejection advance by the Board on 8/17/05. Applicant has added the limitation that the "house advantage is dependent upon the knowledge of a particular player". However, a "players knowledge" is recognized as being synonymous to his "skill. On pg. 218, ln. 16 of Casino Operations Management we know that "player skill level" is "probably the most significant determinant" of hold (or how much money the casino makes). Another illustration of the considerations of player skill tht is fairly taught by the prior art is most notable in the game of blackjack as discussed by Martinez (pg. 41) where the house percentage "fluctuates...depending upon the skill of the player. As such it follows that making the house percentage or amount of money made by the house dependent upon the knowledge, i.e. skill, of a player would have been obvious in order to assure that the casino does not lose money (Vancura pg. 23, ln. 4). Claims 8 and 19 calls for "playing the knowledge-based game occurs when play of the underlying game of chance stops". In Walker, symbols generated by the reels determine a player outcome and the reels are spun again. Walker discloses that the spinning of the reels is wasted time when the game is not being played. As such it is reasonable to determine that the "underlying game of chance stops" at this point when the knowledge-based claim occurs as is set forth by the claim. Claims 10, 25 and 30 calls for setting the house advantage based upon all queries guessed at. What the board calls "basic operational concepts" of casino games is that house percentage and the considerations that are taken into account when they are set. One such consideration is the player skill as discussed above, not only to make sure that the house does not loose money, but also to make sure that they do "not pummel the clientele, and they will not return nor will anyone else visit after the word gets out" (Martinez, pg. 42, cl. 2, ln. 30). As such, to take into consideration the player who knows nothing when setting the range for the house percentage would have been obvious in order to not discourage those players from playing by loosing too much money. As to claims 18 and 24, a player in Walker is paid more money when correctly answers than when incorrectly answers meeting the limitation of the claim. As to claim 88, Walker delivers payoffs in the game of chance prior to playing the knowledge-based game while the reels are spinning."

"As to claim 1, Walker shows receiving a wager bet and playing a game of chance that results in a first outcome. Col. 3, ln. 26 explicitly states that "the outcome of the slot machine play and corresponding reel combination are determined by accessing

the appropriate probability table." This outcome is provided to the player and stored in the payout database 900. The first outcome is dependent upon a random determination of the reel combinations. The game of chance has a first house advantage shown in the "appropriate paytable" (col. 3, ln. 28). Vancura, Martinez and Kilby teach the consideration for paytables that are designed with a house advantage in mind to ensure a profit from the play of the game.

Walker plays a knowledge-based game using he answers in combination with the underlying game of chance since "a player can use successful trivia game results to access higher reward levels (col. 2,ln. 58). These "higher reward levels" are considered a "second outcome" provided to the player as recited in the claim.

With respect to the limitations in the last paragraph, it is important to note that the art we are dealing with is one of casino type games for players to place wagers on games with set odds. These games are designed with "profit" in mind. As set forth in the previous office action, the applied teaching references clearly consider the skill of the player when designing the odds or house advantage. Even the Board Decision of 8/17/05 recognized on pg. 22 "that it would have been obvious to one of ordinary skill in the art at the time of the invention that skilled artsans would have made it one of the major design criteria to assure that there is worst case house advantage that is profitable. And that this value would necessarily be within a predetermined range or a set value.

With respect to claim 3, the play of the trivia game of Walker occurs when the game of chance stops since a player stops looking at the reels to play the trivia game until the symbols generate indicia. Since at what point a game is considered to be stopped is considered overly broad, a player not actively doing anything meets the limitations of this claim. In Walker the "dead time" (col. 3,ln. 47) in which a player is not playing the slot machine is considered to be a point at which the game of chance "stops".

As to applicant's remarks with respect to Walker. pg, 12 merely summarizes applicant's interpretation of the reference with no argument being made. Applicant's first issue staes that the combination of references fails to teach "playing an underlying game of chance which results in a first outcome..." and playing a knowledge-based bonus game resulting in a second outcome. However, these limitations are clearly met as set forth in the rejection above. Walker teaches the "outcome of the slot machine" (col. 3,ln. 26) to be a first outcome in a "basic reward level (col. 2,ln. 61) and a second outcome resulting from the play of the knowledge based game in a second outcome or "higher reward levels" (col. 2, ln. 59). These basic rewards are "provided to the player" in a "first payout database" (col. 3,ln. 11) and the higher rewards are provided to the player in the "enhanced payout database" (ln.19).

With respect to configuring the game to be within a predetermined range. Such design considerations in a casino game are considered fairly taught as set forth in the previous office action and in the paragraphs above.

With respect to new claims 89-101, Walker shows storing questions locally at 600 and a player winning nothing or having a first outcome of zero is known in slot machines."

The claims have now been amended to include the limitations that of a first and second "outcome capable of resulting in a first award payable to the player". Walker is capable of a first reward shown at element 950 and a second reward at 960 in his fig. 9. While applicant points to comments made by the Board as Walker not teaching two payoff, such is considered unpersuasive since his claims do not explicitly recite two payoffs. Moreover, Walker is considered to show the capability of two payoff at 950 and 960 as set forth above.

Claims 1, 3, 8-10, 18, 19, 24, 25, 30 and 88-101 are rejected under 35 U.S.C. 103 as being unpatentable

over Claypole 2,262,642 in view of the teachings of Vancura, Martinez, or Kilby as set forth in the previous office actioin;

" As to claims 1, 3 and 9, Claypole shows a game of chance played at 4 and a knowledge-based game played at 15 (see pg. 3, ln. 25 and pg. 13, ln. 2). The limitation of the "house advantage is dependent upon the knowledge of a particular player" is fairly taught by Vancura, Marinez or Kilby for the reasons advanced in the grounds for rejection above. As to claims 8 an 19, in an alternative view to the rejection set forth above, the game stops when the system at 21 reaches a predetermined outcome. This is considered a "randomly chosen given frequency" meeting the limitations of the claims. Claims 10, 25 and 30 are fairly taught for the reasons advance in the above grounds for rejection. As to claims 18 and 24, a player in Claypole (pg. 12, ln. 15) allows a player an increased reward when he correctly answers meeting the limitation of the claim. As to claim 88, (pg. 12, ln. 15) a player is given payoff in the game of chance which may be wagered in the game of knowledge meeting the limitations of this claim. "

"With respect to Claypole, applicant advances similar arguments are were used on behalf of Walker that neither a "first outcome" or a "second outcome" are provided to the player . Claypole shows a first outcome is in "an award that may or may not be won" (pg. 11, ln. 20) . A player may receive this award at any point (pg. 12, lns. 5-12). He shows a "feature game" (pg. 3, ln. 14) of skill such as a quiz game (ln. 25) which provides a second outcome with and accredited award "for a correct guess". (pg. 13, ln. 5). As set forth above, the design of a casino game with profit in mind is recognized by the Board. Vancura, Marinez and Kilby teach that one would consider a range of variables such as the skill of the player in setting the house percentage. Setting a range with consideration of known extremes, in this case a player that knows nothing and a player that knows everything" would have been obvious in order to design a game that is interesting to players and maintains a profit as taught.

With respect to new claims 89-101, Claypolewalker shows storing questions locally on the game machine of fig. 1 and a player winning nothing or having a first outcome of zero is known in slot machines."

Claypole show a first outcome capable of resulting in an award where he may gamble "the basic pay-out" (pg. 2,ln. 6) and second outcome capable of resulting in an award payable to the player in the form of a prize or jackpot (ln. 16).

Claims 1, 3, 8-10, 18, 19, 24, 25, 30 and 88-101 are rejected under 35 U.S.C. 103 as being unpatentable over Adams 5,848,932 in view of Walker and further in view of the teachings of Vancura, Martinez, or Kilby as set forth in the previous office action;

"Adams shows a game style popular in the art having a primary game and a secondary game. He shows that the secondary game may be a game of skill (col. 7, ln. 38). In these types of games, the secondary game is triggered by a selected event in the primary game, randomly or periodically. He does not specifically mention a trivia game. Walker teaches that trivia games are known games of skill that are combinable with wagering games. To have replaced the multiplier of Adams with that of a trivia game would have been obvious in order to provide a wagering game attractive to players that like trivia games. Vancura, Martinez and Kilby teach the predetermined range as set forth in the grounds for rejection above."

"With respect to Adams, applicant advances similar arguments are were used on behalf of Walker that neither a "first outcome" or a "second outcome" are provided to the player. However, Adams clearly shows a first outcome in a typical "winning payout" (col 3, ln. 48) and a secondary payout in the "secondary payout" (ln. 55). As set forth above, the design of the house advantage in the game of Adams surely would have considered the skill of the player in the desired level profitability.

With respect to new claims 89-101, Adams shows storing questions locally on the game machine of fig. 2 and a player winning nothing or having a first outcome of zero is known in slot machines."

Applicant questions how the proposed modification of Adams with a trivia game would function. Adams is clear that the "secondary payout indicator" may be a game of skill and the players efforts affects the value of a multiplier payout (col. 7, ln. 43). The prior art only need to fairly suggest the claimed combination of a trivia game. It is

considered done as trivia game are considered known games of skill. Changing the secondary game of Adams does not unexpectedly change the function of his game. It merely brings to the game of Adams the steps of the chosen secondary game. One skilled in the art is aware of how variations of trivia games are conducted and a player is awarded for prevailing in the game.

Conclusion

Applicant's arguments filed 2/5/07 have been fully considered but they are not persuasive as set forth above.

This is a continuation of applicant's earlier Application. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William Pierce whose telephone number is 571-272-4414 and E-mail address is bill.pierce@USPTO.gov. The examiner can normally be reached on Monday and Friday 9:00 to 7:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WILLIAM M. PIERCE
PRIMARY EXAMINER